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SUMMARY RECORD OF THE 1433rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 July 1995, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (continued)

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GE.95-17691 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3; HRI/CORE/1/Add.5/Rev.1; M/CCPR/C/54/LST/UK/4) (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland and to raise any questions concerning which they still needed clarification after hearing the United Kingdom delegation's replies to the written questions in section I of the list of issues (M/CCPR/C/54/LST/UK/4).

2. Mr. KRETZMER said that he would first like to ask about the proclamation of the state of emergency in Northern Ireland and the measures relating thereto. The fourth periodic report of the United Kingdom and the information provided by non-governmental organizations appeared to indicate that the proclamation of the state of emergency and the relevant legislation were themselves part of the problem of Northern Ireland. That being the case, why was the United Kingdom Government not considering dropping those measures in the framework of the process currently taking place, which should lead to a political settlement in Northern Ireland? His second subject of concern was the problem of equality and non-discrimination. Some members of the Committee had observed that the report did not have much to say about article 26 of the Covenant. However, the report's treatment of articles 2 (paras. 18 to 56) and 25 (paras. 441 to 482) was very revealing on the subject. While it was true that the report contained some positive elements in that respect, there were also some fairly disturbing ones.

3. Mr. Lallah had referred to the problem of attitudes and perceptions, which was particularly difficult in the law enforcement context. According to the report, 5.5 per cent of the inhabitants of the United Kingdom appeared to belong to ethnic minorities, but in the prison population that proportion was 12 per cent for men and 14 per cent for women. On the other hand, members of ethnic minorities accounted for 1.5 per cent of police personnel, and they were employed only in middle and lower-level posts. He drew the State party's attention to the Committee's general comment 18 (on non-discrimination), on which States parties were asked to take measures to ensure equality of rights in practice. According to information available to the members of the Committee, members of ethnic minorities who had joined the police force appeared to have been the target of racist attitudes on the part of their colleagues and, in May 1993, an industrial tribunal had awarded £25,000 in damages to a police officer who had been the victim of 42 incidents involving discrimination or harassment by a total of 60 of his colleagues. He would like to know what measures were being been taken to increase the number of police officers belonging to ethnic minorities, especially in middle and higher-level posts, and to create conditions such that when members of ethnic minorities joined the police, they would not be the victims of racist practices by some of their colleagues.

4. Mr. ANDO said he wished to express satisfaction at the recent turn of events in Northern Ireland, to which the United Kingdom delegation had made reference in its preliminary statement.

5. His remarks would relate to the reservations entered by the United Kingdom when it had ratified the Covenant, which he would be tempted to describe as "umbrella reservations" or "framework reservations". That applied, for example, to the second reservation entered by the United Kingdom upon ratification (CCPR/C/2/Rev.4, p. 38), according to which the Government of the United Kingdom reserved the right to apply to members of, and persons serving with, the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they might from time to time deem to be necessary for the preservation of service and custodial discipline. That clause appeared to be too broad, and its consequences could not really be gauged. The same was true of immigration procedures.

6. The Government of the United Kingdom had entered six reservations relating to various articles of the Covenant. With regard to the reservation to article 10, paragraph 3, concerning prison conditions, he endorsed Mr. Bán's remarks. Regarding Jersey, a reservation had been entered in respect of article 11, which concerned imprisonment for non-fulfilment of a contractual obligation. The reservation concerning implementation of article 14, paragraph 3 (d), on the guarantee of free legal assistance to everyone charged with a criminal offence, applied to certain dependent territories, but it was none the less a reservation. And the Government of the United Kingdom reserved to itself the right to defer implementation of article 23, paragraph 3, with regard to a small number of customary marriages celebrated in the Solomon Islands. He was well aware of the difficulties involved in making the rights and traditions of indigenous peoples compatible with international standards, but in view of the fact that it was simply a question of "deferring" the implementation of that provision of the Covenant, he would like to know whether there had been any change in the situation.

7. The United Kingdom delegation had explained that the Government's position on reservations was considerably different from that of the Committee. The Vienna Convention on the Law of Treaties laid down the rule of compatibility of the reservation with the goals and objectives of the treaty, which was for each State party to determine. However, that applied to ordinary treaties, i.e. those governing relations between States, on the basis of reciprocity. Human rights treaties and conventions, on the other hand, were commitments made by the State party to treat everyone under its jurisdiction - nationals or foreigners - in conformity with certain international standards, which were in many cases minimum requirements of international society. In addition, the Committee based itself on the assumption that the State party's commitment was not so much towards other States parties as towards its own inhabitants. On that question, he awaited with interest the written document explaining the position of the United Kingdom Government regarding reservations to human rights treaties.

8. Mr. BHAGWATI said that he was not fully convinced by the arguments put forward in the United Kingdom report in support of the view that the incorporation of the provisions of the Covenant into domestic law was not

necessary to ensure that the State party's obligations under that instrument were reflected in the deliberations of Government and of the courts (CCPR/C/95/Add.3, para. 5). In his view, the rights set forth in the Covenant must be included in United Kingdom domestic law in order to be implemented by United Kingdom courts and invoked by individuals whose rights had been violated. In the common-law tradition, judges had used the procedure of recognition to develop a series of new individual rights, while taking care not to establish new legislation. But the power of the common-law system to guarantee the various aspects of a broad spectrum of human rights had its limits. His question was therefore the following: could it be stated that all the rights set forth in the Covenant were already covered by common law? Mr. Lallah had provided several examples demonstrating the contrary, which tended to prove that it was necessary to incorporate certain rights into domestic legislation.

9. Moreover, protection of the rights set forth in the Covenant could not be dependent on the opinion of a simple majority in Parliament; it must receive more durable support, which could only be given by incorporating those rights into domestic law. The United Kingdom argued that individuals whose human rights had been violated could turn to the European Court of Human Rights, but that was a lengthy, difficult and costly procedure.

10. Like other members of the Committee, he believed it was important that the periodic reports which the United Kingdom submitted to the Committee should be made available to the public; they should be made available to non-governmental organizations in particular, in order to help for them to contribute to the dialogue between the Government and the Committee by providing the Committee with information in writing.

11. Lastly, he was disturbed at the resurgence of racially-motivated crimes and assaults in recent years and would like to know what measures the Government had taken in that connection. He was surprised that, despite inquiries into certain murders and assassinations perpetrated by armed supporters of the "loyalists" in Northern Ireland, no suspects had yet been prosecuted. That was a problem which the Government of the United Kingdom should look into.

12. Mr. BRUNI CELLI noted a positive development in paragraph 8 of the report (CCPR/C/95/Add.3), in which the Government announced that it intended to make the text of the report and the summary record of the oral examination by the Committee widely available, and that copies of both would be placed in the Libraries of both Houses of Parliament and made freely available to anyone who wished to receive a copy.

13. He endorsed the remarks of other members of the Committee concerning the incorporation of the provisions of the Covenant into domestic law and the ratification of the Optional Protocol. He wished to refer to the issue of the teaching of languages other than English in the United Kingdom, which the report dealt with under article 27. He noted with satisfaction what was being done in Wales in support of the Welsh language, notably through television programmes in Welsh, for which the Government provided an annual subsidy of about £55 million and which accounted for an average of 104 hours a week of BBC broadcasting. The promotion of the Gaelic language in Scotland also

received subsidies of £8.7 million a year. That being the case, he was surprised not to find any information about an equivalent policy of support for the Irish language. Was that indicative of discrimination connected with the current conflict?

14. Mr. HALLIDAY (United Kingdom) said that there was undeniably a fundamental difference between the position of his Government on the incorporation of the provisions of the Covenant into domestic legislation and that of the Committee, which attached more importance to the practical advantages of incorporation. The main problem lay in the conception of common law in the United Kingdom. In that connection he cited the statement in which a member of the House of Lords had in January 1995 expressed pride in the conception of human rights in the United Kingdom, which was different from that of many other countries. That difference related to the fact that citizens did not have to identify any right in order to justify their conduct; the emphasis was rather on freedom, citizens having complete freedom of conduct unless restrained by law. It was for an individual who considered that his rights had been violated by someone else's behaviour to invoke the law that imposed restrictions on that freedom. British citizens did not need to have their rights and freedoms listed, since they had them in any case.

15. Some members of the Committee had dwelt on the statistics relating to cases involving the United Kingdom which had been dealt with by the institutions established under the European Convention on Human Rights. In order to get a clear idea of the situation, however, it was not sufficient to look at the number of cases dealt with and the outcome of the proceedings; account must also be taken of the number of years that had elapsed since the State party had signed the instrument in question and the relative size of its population. If those parameters were taken into account, the United Kingdom's record compared extremely well with other countries; it was in fourteenth or fifteenth place out of 30 countries. What was more, it was interesting to note that most of the countries with lower ratings than the United Kingdom had in fact incorporated the European Convention into their domestic law. In his Government's view, that clearly showed that too much importance should not be attached to incorporation as a means of providing practical remedies to individuals.

16. Reference had also been made to the length of the procedures. His delegation submitted that alleged violations of the European Convention were unlikely to be resolved more quickly through incorporation. That was clearly indicated by the statistics on cases examined in Strasbourg. Concluding his observations on that question, he assured members that the Government's position on the incorporation of the provisions of an international instrument into domestic law had been given careful thought and was the result of a detailed study; he would make a point of transmitting the Committee's comments to the United Kingdom authorities.

17. Concerning the protection of rights in Northern Ireland, he pointed out that the various components of the United Kingdom had different legal systems and were free to develop legislation which reflected their own needs and circumstances. It would be agreed that that was a rather positive element, reflecting the freedom given to those communities to decide their own affairs, within the framework of the general principles that applied to the

United Kingdom as a whole. As to the question whether there was a timetable for extending safeguards against racial discrimination in Northern Ireland, his delegation had nothing to add to what it had already said, save that intensive consultations had already taken place and would continue on that question, and that they would lead to detailed proposals which would be announced as soon as possible.

18. Questions had also been asked about possible further safeguards for human rights in general in Northern Ireland. In that connection, he referred to the documents he had already mentioned in his opening statement. Paragraph 12 of the document entitled, "A Framework for Accountable Government in Northern Ireland" set out plans for reinforcing the protection for specified civil, social and cultural rights, especially in areas within the competence of the new political institutions and on the basis of principles to be agreed in consultations between the parties. The means of such protection would accord with the constitutional arrangements of the United Kingdom and would build on existing safeguards.

19. Paragraph 50 of the document entitled "A New Framework for Agreement" stated that the agreement between the Government of the United Kingdom and the Government of the Republic of Ireland would include an undertaking to ensure the systematic and effective protection of common specified rights, and that the two Governments would seek agreement with the political parties of Northern Ireland on the rights to be specified and how they might best be further protected. There was an additional undertaking to introduce legislation to give effect to whatever agreement was reached. Among the additional means of protection were the appointment of commissioners or bodies to oversee particular areas of possible concern and the introduction of machinery to ensure that draft legislation conformed to existing international obligations or the model of the Northern Ireland Constitution Act of 1973, which made invalid any law attempting to discriminate on the grounds of religious belief or political opinion.

20. Lastly, his Government believed that the best interests of Scotland and Wales, whose situation was in no way comparable with that of Northern Ireland, were served by direct representation in the central Government, while also providing them with large measures of autonomy at the local level. That was why Scotland and Wales each had a Secretary of State in the Cabinet with substantial responsibilities for policy. In addition, in response to concerns, especially Scottish concerns, the Government had changed certain parliamentary procedures. The development of government in Scotland and Wales was the subject of continuing political debate in the United Kingdom, but his Government would continue clearly to assert its belief in the value for the people of Scotland and Wales of the continuation of the Union.

21. Mrs. EVANS (United Kingdom) said that she would like to speak about the question of the Optional Protocol to the Covenant, which the United Kingdom had not ratified. The members of the Committee had put forward some attractive arguments in favour of ratification, the main one being that the Covenant and the European Convention on Human Rights protected different rights and therefore, according to some members, there might be gaps in the protection of rights in the United Kingdom. Obviously a comparative analysis of the two instruments could be made, but that would not be an entirely

profitable exercise. At the risk of oversimplification, it might be said that although some rights were not guaranteed in the European Convention, that did not mean that an individual could not bring a complaint for violation of a right set forth in the Covenant and not in the Convention (e.g. in art. 10, art. 14, art. 23, para. 1, art. 24 and art. 27 of the Covenant) under a similar article of the Convention. Other rights were covered by both instruments, but not in identical terms. That was the case with article 2, paragraphs 2 and 3, and article 7 of the Covenant. It should be borne in mind that the Bill of Rights of 1689 outlawed cruel and unusual punishment (corresponding to art. 10 of the Covenant), and a recent case concerning prison conditions clearly showed that it was possible for the courts of the United Kingdom to consider, by reference to the Bill of Rights, questions that were not set forth in the European Convention. In addition, the European Convention made provision for property rights, about which the Covenant was silent. In any event, although an individual might not be able to seize the European Commission of Human Rights in Strasbourg because the Convention did not contain provisions enabling him to do so (whereas the Covenant would enable him to seize the Human Rights Committee), that individual was not without a remedy. In the case of prison conditions, for example, he could address himself to the boards of visitors of prisons, the Secretary of State or, since 1994, the Prisons Ombudsman or his counterpart in Scotland.

22. As to other rights, the law provided comprehensive protection for children, and the race relations and sex discrimination legislation also provided safeguards. There were abundant examples of remedies available to individuals for enforcing their rights, but she would focus on two areas mentioned by one member of the Committee - immigration and privacy.

23. Regarding immigration, it had been asked how the right to take proceedings before a court, set forth in article 9, paragraph 4, of the Covenant, was guaranteed. Powers of detention in relation to immigration were set forth in the Immigration Act of 1971. Detention in such cases was not subject to a prior decision by a court and could be resorted to pending completion of the investigation into whether the person in question should be granted leave to enter the United Kingdom or in connection with a deportation provision. Continued detention was only lawful if the particular circumstances fell within any of those powers; the remedy of habeas corpus remained available to challenge detention based on those powers.

24. Remedies were also available to anyone who believed that his right to privacy had been violated. The issue of press freedom and individual privacy presented a difficult balance to be struck. Two reports had recently been published in the United Kingdom and considered by the Government: one dealt with the question of press self-regulation and the other with privacy and media intrusion.

25. The Government had just issued its conclusions after a careful consideration of the two reports. It had announced that, in its view, it would not be right to legislate in order to control the press and it had therefore rejected the proposals (made in the reports) to set up a statutory press complaints tribunal or a statutory press ombudsman. It had also rejected the idea of establishing particular criminal offences or a new civil

remedy for infringement of privacy. At the same time, it had recommended improving press self-regulation and further improvements in the public interest.

26. Generally speaking, her Government considered the Optional Protocol to be just that: optional. Regarding article 27 of the Covenant, for example, it considered that the procedure set forth by the Optional Protocol was not the most appropriate way to examine issues concerning group rights, and that the article raised social and cultural issues which were better dealt with in the framework of the periodic reporting system. Her country's position on the Optional Protocol must be seen against the background of the rights and freedoms guaranteed by the British system; they could only be removed or restricted by express legislative provisions. To the extent that the United Kingdom considered that specific further rights should be conferred on individuals, it had taken the necessary measures, but it did not consider the Optional Protocol an appropriate means for securing any additional protection of rights.

27. Regarding the reservations made by the United Kingdom to certain articles of the Covenant, she invited the Committee to await consideration of the report on the dependent territories before dealing with the reservations to article 11, article 14, paragraph 3 (d), and article 23, paragraph 4. As to the other reservations, the United Kingdom had carefully reviewed the grounds for the reservations to articles 10, 12 and 24 of the Covenant, together with the general reservation on military and custodial discipline, and had concluded that they should be maintained.

28. Concerning the reservation to article 10, it should first of all be pointed out that her Government supported the general principle, laid down in article 10, paragraphs 2 (b) and 3, that detained juveniles should be separated from adults. However, in the United Kingdom, there was a third age group, i.e. young adults aged between 18 and 20. Sentenced male offenders were as a rule held in separate prison premises, although in some circumstances it was deemed necessary to depart from that principle, in the interest of the juveniles themselves, for example in order to allow access to particular facilities. Accused 15 to 17-year-olds awaiting trial and 18 to 20-year-olds in the same situation were regularly held together in order to provide them with a reasonably large social group. Young people aged 15 to 17 could only mix with prisoners aged 21 or over in very limited circumstances and under strict supervision.

29. The United Kingdom had entered reservations to article 12, paragraphs 1 and 4, and continued to consider them necessary, as only British citizens had an absolute right of entry and of abode in the United Kingdom. All other persons entering the United Kingdom were subject to immigration control. As there were no plans to remove that control, the reservation remained appropriate. The reservation to article 12, paragraph 4, was based on similar grounds. Those matters were of great importance to the United Kingdom, which wished to spell out the limits on its international obligations in order to discharge them more effectively.

30. The United Kingdom could not accept without reservation article 24, paragraph 3, as the 1981 Nationality Act did not provide for British citizenship to be acquired as of right by birth in the United Kingdom. To acquire British citizenship automatically, children must be born to British citizens or to parents who were settled in the United Kingdom. The Act gave citizenship to children born stateless provided they had a connection with the United Kingdom through residence or parentage.

31. With regard to the general reservation concerning the preservation of service and custodial discipline, her Government believed that if any measure adopted with the aim of preserving discipline was in conflict with the Covenant, procedures authorized by United Kingdom law should prevail. That general reservation was justified by the need to authorize measures that were indispensable to ensure the effectiveness of the armed forces and necessarily entailed restrictions on individual freedom. Similarly, custodial discipline was considered to be of the highest importance, in particular when it was necessary to prevent the spread of insubordination.

32. Mr. HALLIDAY (United Kingdom), concluding his delegation's observations on the question of reservations, requested the Committee to bear in mind that his Government had not adopted an unthinking attitude but had given serious thought to all the implications of withdrawing its reservations before deciding to maintain them.

33. In the case of article 26 of the Covenant, his Government's approach was certainly different from that of the Committee, which had a different interpretation of the ambit of the article. In the view of British jurists, the article was essentially about the rule of law. Notwithstanding that divergence of views, the United Kingdom delegations which had participated in the consideration of the successive periodic reports had always tried to be forthcoming about the question of equality and non-discrimination, even if they had done so not under article 26, but under articles 2 and 25. The authors of the fourth periodic report could certainly have given greater attention to the numerous measures adopted to combat discrimination than they had actually done, and his delegation would certainly think further about how the Committee could in the next report be fully informed of the action taken in that sphere.

34. In the United Kingdom, all non-governmental organizations that wished to do so took part in public life. It was true that they had not been directly involved in preparing the fourth periodic report, nor had its preparation been the subject of any parliamentary procedure. However, copies of the report had been placed in the libraries of the Houses of Parliament, the British Library and other deposit libraries on the day of its submission to the United Nations. Once it had been written, the report had been the subject of a parliamentary debate, and any citizen who wished to do so could acquaint himself with it. Copies had also been sent as a matter of course to the main British non-governmental organizations and to any others that had expressed an interest, and, on request and free of charge, to any interested members of the public. There were plans to make the report available on the Internet. The summary records of the meetings devoted to consideration of the fourth periodic report would also be made widely available.

35. One member of the Committee had inquired why no report on the investigation carried out by Mr. Stalker in Northern Ireland had been published. The investigation had been a criminal one, and it was quite clear that if its findings had been made public, persons who had been prepared to testify in connection with the investigation would no longer have been prepared to do so and would even have been in grave danger. However, it was as a result of prosecutions of police officers following a number of deaths in 1982 that Mr. Stalker had been given the task of carrying out his investigation. It was the independent Director of Public Prosecutions for Northern Ireland who had decided that no further prosecutions should be brought, in the public interest. The matter had been the subject of a full debate in Parliament, and it had emerged that considerations of national security had justified the decision not to bring prosecutions, as lives had been at risk and the efforts of the police to prevent terrorist activities might have been frustrated.

36. Regarding the release on licence of Private Clegg, it should be made quite clear that he had been convicted of murder and not manslaughter, a conviction which had been upheld on appeal in Northern Ireland and by the House of Lords. However, the trial had raised concerns about the state of a law which had effectively required a conviction for murder and therefore the imposition of a life sentence. In its judgement, the Court of Appeal had emphasized that Private Clegg had not intended to kill or wound anyone when on patrol, but merely to perform his duty to maintain law and order. The Court had added that he had rightly been convicted because he had used his firearm unlawfully, but it had taken the view that the law would have been much fairer if the trial judge had been able to convict Private Clegg of manslaughter rather than murder. A review of the law was under way regarding criminal offences of that nature.

37. The death of Joy Gardner was indeed a tragic case, and the Government had expressed its great regret. Three officers had been charged and then acquitted, and the disciplinary proceedings against them had not resulted in any disciplinary action. He could only point out that all the appropriate procedures had been followed. In addition, the expulsion procedure which had led to the victim's decease had been thoroughly reviewed by the authorities, and he would return to the outcome of that review when replying to the question on the deportations and removals of illegal entrants (section III (e) of the list of issues (M/CCPR/C/54/LST/UK/4)).

38. It was well known that there was no prescribed religion in the United Kingdom, and any unjustified interference with the right of everyone to practise his religion freely could constitute a punishable offence. Religious organizations were free to own property, to run schools and to promote their beliefs in speech or writing. A voluntary body of any religious persuasion could submit to the Secretary of State for Education an application for permission to establish a school. All applications were considered case by case, regardless of the denomination or faith, although on the basis of certain common criteria. There were no public-funded Muslim schools and no applications to establish grant-maintained schools had been made. However, three applications to set up voluntary-aided schools had been filed. One had been withdrawn as the body had not obtained the necessary planning permission, another had been rejected because there had been surplus education capacity in

the area concerned, and the third had also been rejected because the proposed accommodation had been judged less than adequate. In the latter case, there was nothing to prevent the application from being submitted again.

39. Where Northern Ireland was concerned, the Government was committed to ensuring full equality of opportunity and the elimination of all forms of discrimination. In one respect, Northern Ireland's labour legislation was probably the strongest in Europe. Over 4,000 organizations were registered and they monitored the Catholic and Protestant share of the workforce annually. The Catholic share was increasing at an annual rate of 0.5 per cent, and they currently accounted for 37.3 per cent of the labour force. Since 1990, the number of Catholic professionals had increased by 5.4 per cent. During the passage of the Fair Employment in Northern Ireland Bill through Parliament, the Government had undertaken to carry out a review of the legislation after five years, and the Independent Standing Advisory Commission for Human Rights, which had been entrusted with that task, would submit its report in 1996. It was the Commission's role to monitor observance of the law as a whole.

40. In the case of the murder of Mr. Finucane, the Department of Public Prosecutions had not found sufficient evidence to mount a criminal prosecution, although the victim's widow had brought a civil action, which was following its course. The Committee would understand that he was unable to comment any further.

41. Those members of the Committee who had expressed concern about the fate of Gypsies or travellers had probably had in mind the new Criminal Justice and Public Order Act, adopted in 1994, which, it was true, gave stronger powers to the police over trespassers en masse. The aim of the Act was in no way to prevent law-abiding travellers from pursuing their chosen lifestyle. The stronger provisions introduced by the Act were designed to protect citizens and only concerned disorderly behaviour or public nuisance.

42. Where domestic violence was concerned, he explained that the question had been debated at length in Parliament. The Government's view was that domestic violence should be treated as a crime. In particular, the perpetrators of domestic violence should be brought before the courts and the victims given assistance. Furthermore, the authorities were endeavouring to develop policies to prevent domestic violence. A ministerial body had been appointed to coordinate national and local measures to address that problem. The Government recognized that, in order to take effective measures, it was essential to obtain the involvement of local authorities and bodies, which should be fully involved in developing preventive strategies and supporting victims. The Government was currently drawing up relevant guidelines. Furthermore, a national campaign to develop public awareness had recently been organized. As to the punishment of offences, United Kingdom legislation laid down substantial penalties. The Government spent some £10 million annually on victim support. Civil law had also been reformed and now provided more extensive grounds for bringing cases before the competent courts. In addition, the courts would henceforth be able to issue a power of arrest with their orders. Where the victims were concerned, the Government believed that

local authorities and bodies were in the best position to take the necessary measures to assist them. The nature and extent of refuge provision for victims of violence were currently being reviewed.

43. Statistics on cases of violence should be treated with caution. While official figures for reported cases of domestic violence showed an increase, that was mainly because people had greater confidence in their country's courts and lodged complaints more frequently than in the past when they were attacked. As a result, current statistics shed light on a part of the phenomenon that had previously been hidden.

44. In reply to a question on the mandatory life sentence for murder, he said that an appeal could be made against any such sentence and the courts could, on appeal, decide to change the classification of the offence and thus to commute the sentence. The authorities nevertheless believed that it was important to maintain the life sentence for murder, on account of the unique heinousness of that crime.

45. In reply to a question on crime among ethnic minorities in London and the response of the police, he said that the measures currently being developed by the police authorities were designed to counter crime and to respond to public concern at the rise in the number of crimes. Some measures had met with success, in particular those to prevent burglaries and to prosecute housebreakers. As a whole, a number of surveys had shown that in areas with a large ethnic minority population, both victims and offenders frequently came from the same minorities. Consequently, the police were seeking to involve local ethnic minorities in tackling crime. In that connection, letters had been sent out requesting the various communities to cooperate with the authorities. The reaction to the letters showed that people generally believed that problems were settled better by tackling them head on rather than leaving them unaddressed. The Government had supported the police's efforts to resolve the difficulties with the backing of the various communities in London.

46. In reply to a question about racial discrimination within the police and prison service, he said that the Government did not deny that there were some problems in that area. He recognized that much remained to be done, in particular in the recruitment and promotion of members of ethnic minorities in the police. In 1993 the Government had adopted a number of measures applicable to the police. In particular, the police had been instructed to gather information on the number of ethnic minority officers in the force compared to the size of the force and to the local ethnic minority population.

47. The police had also been asked to spell out the measures they intended to take to increase the proportion of officers from ethnic minorities. It had also been decided to study the retention and wastage of officers from ethnic minorities. Certainly, the shortcomings and imperfections identified in the past would be duly taken into account in order to improve the relevant policies and practices. In that connection, it should be mentioned that the police recruitment test had been revised in 1992, in order to ensure a fair and efficient selection of applicants. The new procedure had previously been studied by independent consultants. Generally speaking, a lot of progress had

been made in equal opportunity policies and strategies. However, the longest and most arduous task was to transform those polices and strategies into real change on the ground, in attitudes and in individual behaviour.

48. On the question of the Prison Service, prison governors had been asked to make a particular effort to attract applications from members of ethnic minorities. Between autumn 1992 and autumn 1993, 7.5 per cent of prison officer candidates had been from ethnic minorities (the figure had been 37.8 per cent in London); 2.3 per cent of candidates had been successful. The authorities realized that the failure rate was high among ethnic minorities and that the nature of the tests would have to be revised accordingly. However, there was a more encouraging figure: between January 1990 and October 1993, 180 prison officers from ethnic minorities had been appointed.

49. Regarding the alleged discrimination against the black minority in prisons, he said that studies carried out so far had not provided clear evidence of the existence of widespread discrimination within the criminal justice system. However, the authorities attached particular importance to observing the rule of non-discrimination. The Criminal Justice Act of 1991 required the Government to provide prison employees with any information that might help them in the performance of their duties, in particular to prevent any form of discrimination. In the same connection, the Judicial Studies Board, which supervised the training of judges, had set up an advisory committee on ethnic minorities some years before; one of its responsibilities was training on issues concerning those minorities.

50. In reply to a question on radio and television broadcasts in the Irish language, he said that broadcasts in Northern Ireland came under the responsibility of the British Broadcasting Corporation and independent companies. The Government of Ireland had asked the British Government whether it intended to establish an Irish-language television station and, if so, whether it would operate on an all-Ireland basis. That was a complex issue, which would first have to be discussed from the technical standpoint. There were some 5,000 Irish speakers in Northern Ireland, and so the situation was rather different from that in Scotland and Wales. In that as in other spheres, the Government was endeavouring to develop responses that were geared to local circumstances and needs.

51. The CHAIRMAN invited the delegation of the United Kingdom to reply to the questions in section II of the list of issues (M/CCPR/C/54/LST/UK/4):

> "II. State of emergency; right to life, liberty and security of the person, treatment of prisoners and other detainees, and right to a fair trial (arts. 4, 6, 7, 9, 10 and 14)
>
> (a) In view of current developments in the situation in Northern Ireland and the lapse of time since the notification of derogation from the obligations under certain provisions of article 9 (12 December 1989), does the United Kingdom intend to reconsider the necessity of such derogation and amend the rules governing extended detention in order to introduce some form of judicial supervision (see paras. 77 to 80 of the report)?

(b) Please provide information on conclusions reached pursuant to the latest annual parliamentary review of the Northern Ireland (Emergency Provisions) Act 1991 (see para. 181 of the report).

(c) Please further comment on the specific rules and regulations governing the use of weapons by the police and security forces under anti-terrorism laws in Northern Ireland. In particular, comment on the use of the new plastic bullets and consequences thereof and describe the role and powers of the independent Director of Public Prosecutions in so far as investigation of incidents involving members of the security forces is concerned (see paras. 95 to 101 of the report).

(d) In the light of the discussion during the consideration of the third periodic report, please clarify whether the planned review of prison rules and standing orders in Northern Ireland has been completed and, if so, whether any of the changes adopted in the rest of the United Kingdom has been incorporated in such rules.

(e) In view of the prohibition of inhuman or degrading punishment under the Education Act 1993, please clarify the type of corporal punishment which can still be administered in independent schools (see para. 169 of the report).

(f) Are guarantees for the protection of the rights of convicted persons held in prisons ensured to persons detained in prison cells under Section 6 of the Imprisonment (Temporary Provisions) Act 1980 (see paras. 257 to 259 of the report)?

(g) Has the necessary legislation for the setting-up of the independent Criminal Cases Review Authority been adopted and, if so, has the Commission initiated its work (see para. 316 of the report)?

(h) Please further comment on the institution of the Prisons Ombudsman. Have his activities had any impact on the situation of detainees' rights since his appointment in April 1994 (see para. 126 of the report)?

(i) Please provide information on prisons contracted out to the private sector. Are those prisons under permanent control of the State and how is the application of the law and of the rights of prisoners guaranteed therein?

(j) What have been the results of the experiment concerning the tape-recording of all police interviews with terrorist suspects in England and Wales? Will the law be amended to make the practice permanent (see para. 174 of the report)?

(k) Has Parliament already passed the law allowing courts in England and Wales 'to draw what inferences appear proper from the fact an accused person has remained silent' as is currently the case under the legal rules applicable in Northern Ireland (see paras. 320-328 of the report)?"

52. Mr. HALLIDAY (United Kingdom), replying to question (a), said that the Home Secretary had informed Parliament on 8 March that the Government had kept under review the need for the derogation in question and had decided that it would be premature to withdraw it. The main terrorist paramilitary groups had proclaimed a cessation of hostilities, which had enabled the Government to enter exploratory dialogue with political representatives and to reduce some security measures. However, it should be borne in mind that the terrorist groups remained fully capable of carrying out violent attacks, either in Great Britain or Northern Ireland. In those circumstances, there was every justification for authorizing the detention without charge, for up to seven days, of persons suspected of terrorist acts.

53. More generally, the issues raised under question (a) had been studied in a report prepared by an independent reviewer appointed to examine emergency legislation. According to the reviewer, it was not advisable to create a system of "judicial supervision", for a number of reasons. First, decisions resulting in prolonged custody in Northern Ireland were invariably based on information that could not be adduced in court without jeopardizing individuals, in particular police informants. Secondly, some details could not be revealed to the detainee. Thirdly, the judge would not be able to give reasons for his decision and thus there would be no real possibility of appeal against it. The authorities believed that the provisions governing detention as referred to in question (a) did not constitute a judicial procedure, but involved an executive decision. Lastly, the Government considered that the adoption of a system of "judicial supervision" would undermine public confidence in the judicial system.

54. With regard to question (b), he said that the Northern Ireland (Emergency Provisions) Act of 1991 had been the subject of an independent review and renewed by Parliament on 15 June 1995 for a further year. The independent reviewer had concluded that the Act should be maintained but that it should be kept under review. Parliament and the Government had fully endorsed that view. The Act would therefore expire in 1996, and it would be possible to suspend individual provisions in the meantime. The Government had in fact stated that it would not hesitate to do so, after consulting the security forces.

55. The authorities looked forward to the day when the emergency legislation would be repealed, as soon as the situation permitted. Although the worst forms of violence in Northern Ireland had ceased one year earlier, that period was not sufficient to enable the Government to state with certainty that permanent peace had been established. Paramilitary groups on both sides were refraining from using violence for political ends, but the organizations and structures had not been disbanded and the weapons had not been decommissioned. The IRA and loyalist paramilitary groups were continuing all their activities short of acts of violence that would breach the cease-fire. They were continuing to store and hide weapons and to take action designed to intimidate the population; although they were not using firearms, they were still carrying out assaults.

56. For all those reasons, his Government believed that it would be wrong to remove the protection afforded by the anti-terrorist legislation. Nevertheless, that legislation had been used less often since the proclamation

of the cease-fire. The number of people suspected of terrorist offences who had been arrested under the Prevention of Terrorism Act had decreased by two thirds. Since October 1994, only 12 people had been detained for over 48 hours. During the first quarter of 1994, there had been 1,379 house searches; for the same period in 1995 that figure had fallen to 164.

57. The Government remained committed to the principle that the powers contained in the Act should be available for no longer than necessary. During the parliamentary debate of 12 June 1995, the Secretary of State for Northern Ireland had announced that, provided peace continued in Northern Ireland, the authorities would hold an independent review of the continuing need for counter-terrorist legislation. The timing of that review had not yet been decided; pending that review, it might be necessary to seek new legislation before the Act expired in 1996. Any new provisions would be only temporary, however, and the implementation of many of them might be suspended from the outset.

58. Regarding question (c), he said that the law on the use of weapons in Northern Ireland was based on common-law rules of self-defence and on the provisions of the Criminal Law Act (Northern Ireland) of 1967. Under those provisions, members of the security forces could only use such force as was reasonable in the circumstances for the prevention of crime or in effecting, or assisting in, the lawful arrest of offenders or suspected terrorists. The legislation applicable to Great Britain and Wales contained similar provisions. Members of the security forces enjoyed no immunity and were responsible for their acts under the law. Any incident involving members of the security forces which resulted in death or injury was thoroughly investigated by the police. An independent commission was responsible for examining complaints against the police in Northern Ireland. If the Royal Ulster Constabulary was involved, the case was supervised by the commission. The results of those investigations were passed to the independent Director of Public Prosecutions for Northern Ireland (see report, para. 99), who decided whether a prosecution should be brought; he could also order further inquiries. He added that no one had been killed by the security forces in terrorist-related circumstances since November 1992. The British authorities hoped that the current developments in Northern Ireland would continue.

59. In reply to the question on the use of new plastic bullets, he said that the army and the Royal Ulster Constabulary had been using a new weapon since 3 June 1994. That weapon, which had replaced one that had become obsolete, had only been adopted after a series of trials, and appropriate training was given to people using it. The adoption of the new weapon had made it possible further to reduce the already low risk connected with the previous weapon. A new baton round had also been introduced, the only difference between it and the old one being that it was made from a different material (the material used for the old baton round was no longer available).

60. On question (d), he said that the new prison rules and young offenders' centre rules had entered into force in Northern Ireland on 1 March 1995. The texts of the rules had been adopted after consultations with several competent groups. The standing advisory commission on human rights had said that the draft rules represented a significant step towards providing a regime capable of more effectively safeguarding prisoners' rights. The new rules took due

account of the comments made during the consultations. In addition, the Northern Ireland Prison Service had adopted a series of rules that reflected its own particular needs. The new rules were based on a number of principles, including improvement of living conditions, respect for the individual, equal treatment, reasons for decisions, family links and information to prisoners. In addition, for the first time specific provisions had been introduced on conditions of imprisonment and on complaints and requests.

61. In the Government's opinion, the question could not be dealt with uniformly throughout the United Kingdom; particular circumstances and needs must be taken into account. Not all the changes made in the rest of the United Kingdom had necessarily been replicated in Northern Ireland.

62. With reference to question (e), he said that it was for head teachers of private schools to decide what type of corporal punishment was appropriate in their establishments. That having been said, article 47 of the Education Act (No. 2) of 1986, as amended by the Education Act of 1993, laid down precise criteria for determining whether punishment was inhuman or degrading. That legislation was also in keeping with the Convention on the Rights of the Child, which stipulated that disciplinary measures must respect the child's dignity. Only a very small number of private schools still administered corporal punishment.

63. Regarding question (f) on persons detained in police cells, he explained that everyone in that situation, whether or not they had been sentenced, was detained under the Imprisonment (Temporary Provisions) Act of 1980 (see report, para. 258). Those detainees were held in police custody: the Prison Rules of 1964 (amended) were not applicable. The Prison Service, for its part, ensured that persons held in police cells were properly treated. To that end, officials had been designated to help the police take steps to enforce certain minimum rules, in particular regarding the cells themselves, clothing, medical care, family visits, correspondence, food, visits by "lay visitors" (see report, para. 152) and how to give effect to detainees' complaints.

64. That having been said, both the Government and the Prison Service made every effort to avoid holding in police custody people who in fact should be in prison. In all cases, police cells were only used as a last resort, and for the briefest possible periods. Efforts were also being made to increase prison capacity. Some people had been held in police cells in 1994 and early 1995 because of a sudden and unexpected increase in the prison population. He was pleased, however, to inform the Committee that that practice had been dropped as of 15 June 1995. The authorities would see to it that the previous situation did not recur.

65. Replying to question (g), he said that the Criminal Appeal Bill had been considered by Parliament very recently. The Government would like the criminal cases review authority to begin its work as soon as practicable. However, setting it up would undoubtedly take several months, and it would probably not be operational until early 1996. In the meantime, the Home Secretary and the Secretary of State for Northern Ireland would continue to consider carefully all cases brought to their attention, and would take appropriate action in each case.

66. On question (h), he said that the role of the Prisons Ombudsman was to investigate individual complaints by prisoners and to make recommendations to the Prison Service. The Ombudsman had only begun to receive and consider grievances in October 1994, and it was therefore too soon to make any generalizations about his activities. That having been said, the Ombudsman had received 319 complaints within his jurisdiction as of late May 1995. Investigations had been completed in 188 cases, and 81 complaints had been upheld; 61 of the Ombudsman's recommendations had been accepted by the Director-General of the Prison Service, 2 had been partly accepted, 11 had been rejected and 18 were still under consideration. The Prisons Ombudsman would submit an annual report to the Home Secretary; that report would primarily deal with specific aspects of the treatment of prisoners.

67. With regard to question (i), he said that contracted-out prisons were controlled by the Criminal Justice Act of 1991 and contracts concluded between the Secretary of State and the contractor. Contractors were required to provide a high-quality regime that included education and work programmes, and to allow prisoners substantial time outside their cells and visits. There were currently four such prisons; six more would be built and financed by the private sector. The contracts provided for financial penalties in the event of failure to deliver the required services or non-fulfilment of the targets set. The contract was monitored at each prison by two on-site Prison Service controllers, who were also responsible for adjudication of disciplinary matters. All prisons were open to inspection by the Chief Inspector of Prisons and by an independent board of visitors. The staff in a contracted-out prison underwent approved training and were vetted by the Prison Service acting on behalf of the Secretary of State.

68. Replying to the questions under (j), he said that the results of the trial tape-recording of police interviews with terrorist suspects were currently being evaluated and would shortly be submitted to the Home Secretary, who would draw his conclusions and decide whether the practice should become permanent. Until then, the police would continue to tape-record such interviews.

69. Regarding question (k), he said that the Criminal Justice and Public Order Act, which contained provisions allowing courts to draw what inferences appeared proper from the fact that an accused person had remained silent, had been adopted on 3 November 1994; the provisions concerning the right of the accused to remain silent had entered into force on 10 April 1995. Under those provisions (see report, para. 323), a court or jury could draw such inferences as might appear proper from: (a) a suspect's failure to mention a fact when questioned under caution or charged, if he subsequently relied on that fact in his defence and if he could reasonably have been expected to mention the fact when so questioned or charged; (b) the failure of the accused to give evidence at trial on his own behalf; the court must satisfy itself that the accused was aware that he had the opportunity to give evidence and that the court or jury might draw inferences from a failure to do so; the defendant was not, however, under any compulsion to give evidence (that provision did not apply to children or to defendants whose physical or mental condition made it undesirable for them to give evidence); (c) the failure or refusal of the accused to account for objects, substances or marks found on or about his

person or at the place where he had been arrested; (d) the failure or refusal of the accused to account for his presence at a particular place at the time of arrest.

70. It should be emphasized that none of those provisions compelled a suspect or defendant to say anything if he did not wish to do so, that the principle of the presumption of innocence was respected and that it was still for the prosecution to prove the case against the accused beyond reasonable doubt (report, para. 324). According to the Police and Criminal Evidence Act of 1984, the interviewing police officer must inform the suspect, in ordinary language, of the offences he was investigating, the facts he was asking the suspect to account for, the consequences for the suspect of participation in the offence in question and the fact that the court might draw inferences from the suspect's failure to give explanations. He must also tell the suspect whether his testimony was being tape-recorded and might be given in evidence. Those safeguards were in addition to the ones mentioned earlier, namely, the tape-recording of police interviews and suspects' access to legal advice.

71. The CHAIRMAN said that the United Kingdom delegation had completed its replies to the questions in section II of the list and invited members of the Committee to ask additional questions if they so wished.

72. Mr. BHAGWATI asked whether the provisions concerning the tape-recording of police interviews were in force in England and Wales only and not in Northern Ireland; if they were not in force in Northern Ireland, that safeguard was not being fully respected throughout the country. In addition, if a lawyer's presence could be postponed for 48 hours, suspects could be interviewed for that entire period without a lawyer, which also undermined defence rights. He wondered whether a suspect who had been informed that he was entitled to remain silent but that his decision might be held against him was not being indirectly pressured, to the detriment of the right to be presumed innocent and the right not to be compelled to confess guilt. Those two rights were clearly set forth in article 14, paragraphs 2 and 3 (g), of the Covenant.

73. In connection with article 14 of the Prevention of Terrorism (Temporary Provisions) Act of 1989, under which the police could arrest anyone on a reasonable suspicion that he had been concerned in the commission or preparation of acts of terrorism, he asked whether that did not constitute an abuse of authority by the police with respect to people who had not even been informed of the reason for their arrest. Lastly, he would like to know whether it was true that people detained under the emergency legislation could be deprived for 48 hours of their right to inform their family of their arrest and their right to contact a lawyer.

74. Mr. LALLAH, speaking also on behalf of Mr. Mavrommatis, asked to what extent the provisions concerning a suspect's right to silence were compatible with those of article 14 of the Covenant. He would like to know in particular whether, while being subjected to considerable pressure by the police, a suspect had the right to legal advice when deciding whether or not to remain silent. It seemed that the accused was not necessarily in a position to

determine, without the help of a lawyer, what inferences a court or jury might draw from his decision and that he would thus be deprived of an important part of his defence rights.

75. Mr. BUERGENTHAL, returning to the question of the statements made by the Chief of Police, asked whether the Government was aware of the possible implications of those statements for police officers and senior law enforcement personnel in general, and whether the statements might not be misinterpreted in a multiracial society where certain minority groups would automatically be assumed to be suspects. Concerning a suspect's right to silence, there was no doubt that the jury would make certain assumptions on the basis of a suspect's decision to remain silent after being told that he had the right to make or not make a statement. In his opinion, those provisions raised serious issues under article 14 of the Covenant.

76. Referring to paragraph 251 of the report, he asked whether the Inspectorate of Prisons was authorized to take decisions regarding the practice of a particular religion. On the matter of bail, he asked whether bail was in fact fixed by the police, as indicated in paragraphs 185 and 187 of the report, and, in connection with the Asylum and Immigration Appeals Act mentioned in paragraph 190 of the report, on what legal basis courts received applications for habeas corpus under the Act.

77. In connection with paragraphs 219 and 220 of the report, he asked whether there were remedies that could be filed in respect of a "discretionary life sentence", how the members of the Discretionary Lifer Panels of the Parole Board were appointed and what their qualifications were. Finally, he would like to know for what reasons the Home Secretary might not accept a recommendation for release or the judicial view on tariff (para. 225).

78. Ms. CHANET said that, as she understood it, the emergency laws had been "applied less often" since the improvement of the situation in Northern Ireland. Did that mean that those laws were still in force but were applied differently, or that fewer acts punishable under those laws were committed? In connection with paragraph 328 of the report, she wondered why the Government had disregarded the opinion of the majority of the members of the Royal Commission on Criminal Justice, which had recommended that the bar against adverse inferences from silence should be maintained. She considered that certain aspects of the new Criminal Justice and Public Order Act might be contrary to the provisions of article 14, paragraph 3 (g), of the Covenant and, what was more certain, that the Act undermined the principle of equality. Drawing inferences detrimental to the accused, who already had considerably reduced means available to him and simply failed to furnish certain explanations, introduced a further degree of imbalance between him and the prosecution.

79. Also in connection with the Criminal Justice and Public Order Act, she asked what were the types of press articles and information on terrorism whose possession might constitute a criminal offence. And why had there been a considerable increase in the number of suicides in prisons over the past 10 years? Finally, she asked for an explanation of the case of the nephew of Patrice Lumumba, reported by Amnesty International, who had allegedly been ill-treated and died in detention after applying for asylum.

80. Mr. KRETZMER noted that the more open and democratic the society of a particular country was, the more numerous and varied were information sources, such as NGOs. He wished to stress, however, that in no circumstances did he blindly accept the information thus available to him. That having been said, a number of NGOs had cast doubt on the credibility of the system in the United Kingdom for criminal investigations of complaints against members of the police and the army. The United Kingdom delegation might perhaps furnish some clarification, especially in view of what was stated in the first sentence of paragraph 99 of the report. Also in that connection, serious allegations had been made regarding cases of collusion between "loyalists" and members of the security forces in Northern Ireland. An incident related to that practice had allegedly been at the origin of the murder of a Catholic solicitor, Patrick Finucane, a crime that had gone virtually uninvestigated by the police. In view of those allegations, and those contained in the 1994 Amnesty International report, what mechanisms that were credible in the eyes of all the Communities of Northern Ireland, and indeed England, Scotland and Wales, had been set up to ensure that the necessary investigations were carried out?

81. Lastly, concerning corporal punishment in schools, the delegation had stated that inhuman or degrading punishment had been banned, but it should make it clear what types of punishment were still allowed.

The meeting rose at 6.05 p.m.